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March 1, 2005

Mary L. Cottrell, Secretary
Department of Telecommunications and Energy
One South Station, 2nd Floor
Boston, MA 02110

RE: D.T.E. 04-116- Investigation by the Department of Telecommunications and Energy On Its Own Motion Regarding the Service Quality Guidelines Established in Service Quality Standards for Electric Distribution Companies and Local Gas Distribution Companies, D.T.E. 99-84 (2001)

Dear Secretary Cottrell:

Please find attached an original and nine (9) copies of the Initial Comments of Boston Edison Company, Cambridge Electric Light Company, Commonwealth Electric Company, d/b/a NSTAR Electric and NSTAR Gas Company (together with NSTAR Electric, "NSTAR") in the above-referenced proceeding. The comments include responses to specific questions asked by the Department. Please note that the responses were developed jointly with the other Massachusetts gas and electric companies, as encouraged by the Department in its Vote to Open Investigation in this proceeding. Accordingly, several of the responses include language similar to the responses filed by other gas and electric companies in this proceeding.

An executive summary is also attached. Please contact me or Kerry Britland at NSTAR if you have any questions regarding the Company's Initial Comments.

Very truly yours,

Cheryl M. Kimball

Enclosure
cc: Caroline Bulger, Hearing Officer
Joseph Rogers, Assistant Attorney General

EXECUTIVE SUMMARY

Boston Edison Company, Cambridge Electric Light Company, Commonwealth Electric Company, d/b/a NSTAR Electric and NSTAR Gas Company (together with NSTAR Electric, "NSTAR" or the "Company") are pleased to file the attached comments in response to the Department of Telecommunications and Energy's (the "Department") December 13, 2004 Vote to Open Investigation Regarding Service Quality Guidelines Established in Service Quality Standards for Electric Distribution Companies and Local Gas Distribution Companies, D.T.E. 99-84 (2001).

Along with a discussion of the NSTAR's performance since 2001, when the Department first implemented its SQ Guidelines, the Company responds to the Department's 10 questions as follows:

- Offsets: NSTAR recommends that the Department maintain the offset system because: (1) it addresses issues regarding the mathematical underpinnings of the standard-deviation calculation used to establish performance deadbands; and (2) it provides an incentive to improve service quality. However, the Company further recommends that the Department consider modest changes to its offset system to address issues regarding: (1) the lack of symmetry of offsets and penalties where a utilities performance is relatively high; and (2) the likelihood of achieving offsets and penalties for only minor deviations in performance in certain categories where a company's deadband is very tight.

- Odor Calls: NSTAR recommends that the Department maintain its standard for odor call performance because: (1) all of the local distribution companies' historical performance data is based on this standard; (2) the standard is generally accepted throughout the gas industry; and (3) the standard has ensured the safe and reliable delivery of gas to customers in the Commonwealth since its adoption by the Department in D.T.E. 99-84.

- Staffing Levels: NSTAR recommends that no change is necessary in future Guidelines regarding staffing levels because the Department's current system of monitoring staffing and service-quality levels fulfills the statutory mandate set forth in G.L. c. 164, § 1E (a).

- Standardization of Benchmarks: NSTAR recommends that the Department maintain its current system of setting benchmarks on a company-specific basis because the historical performance of gas and electric companies operating in the Commonwealth is the best data available for the development of valid and appropriate performance benchmarks for measuring the future performance of the companies.

- Incentives: NSTAR recommends that the Department consider the adoption of a symmetrical system of financial penalties and rewards as part of future Guidelines for two main reasons: (1) the possibility of collecting a financial reward for service-quality improvements will

provide a strong incentive to utilities to move forward with service-related investments that benefit customers; and (2) the potential for a financial reward will offset the impact of penalties that have the potential to result where the utility is held to an ever-increasing performance benchmark during the term of a service quality plan.

- Customer Guarantee Payments/Missed Service Appointments: NSTAR currently does not provide customer guarantee payments unless by customer request, consistent with its long-established customer guarantee program. In addition, NSTAR recommends that the Department not require classification of a "missed" service appointment in instances where the distribution company has contacted the customer and rescheduled the appointment.

- Damage to Company Property: NSTAR recommends that the current requirement to report information regarding damage to company property should not be made a penalty measure in future Guidelines.

- Line Losses: NSTAR does not object to the Department's existing requirement that line losses (or unaccounted for gas) be reported as part of the annual service-quality reports. However, the Company would also not object to removing the category as a reporting requirement because line losses are generally unrelated to a company's service quality performance.

- Double Poles: NSTAR recommends that the removal of double poles should not be included as an service-quality measure at this time because, similar to "damage to company property" and "line losses," the removal of double poles is neither wholly within the control of the company to accomplish nor necessarily related to the level of service provided by a company to its customers. The Department should continue its evaluation of enforcement alternatives under D.T.E. 03-87, given these considerations.

- SAIDI/SAIFI: NSTAR supports changing the definition of "sustained outages/interruptions" from an outage of 1 minute or more to an outage of 5 minutes or more in length. The change to a 5 minute sustained outage definition would be in line with industry-wide definitions, and would encourage further distribution automation investments to restore customers' power as quickly as possible, in many cases in under 5 minutes.

NSTAR looks forward to working with the Department through the remainder of this proceeding to discuss fair and effective service quality guidelines for the companies and their customers.

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department of Telecommunications and Energy on its Own Motion Regarding the Service Quality Guidelines Established in Service Quality Standards For Electric Distribution Companies and Local Gas Distribution Companies, D.T.E. 99-84 (2001)	D.T.E. 04-116

INITIAL COMMENTS OF BOSTON EDISON COMPANY, CAMBRIDGE ELECTRIC LIGHT COMPANY, COMMONWEALTH ELECTRIC COMPANY AND NSTAR GAS COMPANY

I. INTRODUCTION

Boston Edison Company, Cambridge Electric Light Company and Commonwealth Electric Company d/b/a NSTAR Electric ("NSTAR Electric"), and NSTAR Gas Company (together with NSTAR Electric, "NSTAR" or the "Company") are pleased to file the following initial comments in the above-referenced proceeding. The Department of Telecommunications and Energy (the "Department") commenced this proceeding to review the Service Quality Guidelines (the "SQ Guidelines") established in Service Quality Guidelines, D.T.E. 99-84 (2001) ("D.T.E. 99-84"). In 2001, the Department approved company-specific service-quality plans in accordance with its SQ Guidelines for an initial three-year period, after which the Department indicated it would further investigate issues relating to service-quality standards. Therefore, in this proceeding, the Department has solicited comment on 10 specific topics relating to the SQ Guidelines, as initially established by the Department. NSTAR's Initial Comments respond to the Department's questions in detail in Section II, infra.

As an initial matter, NSTAR is pleased to report that its performance on the service-quality measures established by the Department in its SQ Guidelines has improved significantly since the inception of the SQ Guidelines. The Company achieved these results through a series of planned and focused efforts to maintain or improve service quality, including institutional changes in leadership, organizational structure, capital spending and planning, and business processes and technology. Thus, the SQ Guidelines have provided the Company with a strong platform to facilitate its internal efforts to measure and evaluate service performance.

With regard to corporate leadership, NSTAR has appointed senior-level management to the customer care and operations divisions with accomplished backgrounds and with reputations as leaders and change agents. These senior managers have provided strong guidance and fresh thinking to the Company's operational practices, which has motivated customer care and operational staff to maintain high-quality service to the Company's customers. NSTAR has also established a Corporate Performance Management Department to insure that the Company is setting and measuring key business controls and performance goals. This department assists in implementing key business process improvements across the Company.

In addition, the Company has invested in its employees in a variety of ways, such as setting up and mentoring multiple Compliance Committees, which have demonstrated NSTAR's desire to improve performance and customer service through the incorporation of a variety of viewpoints and experiences relating to compliance with the Company's service-quality obligations. Also, the Company has delivered improved management development opportunities and quarterly business updates to improve the knowledge and

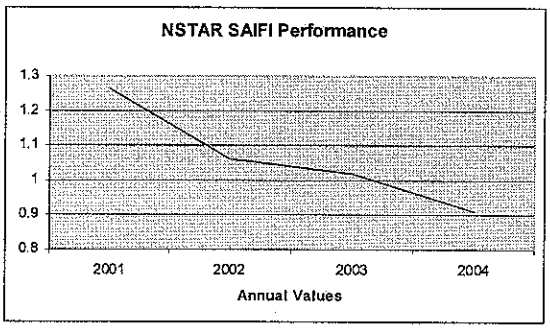
communications throughout the company. Accordingly, the Company has developed an institutionalized approach to provide high-quality service that has produced demonstrable benefits for customers.

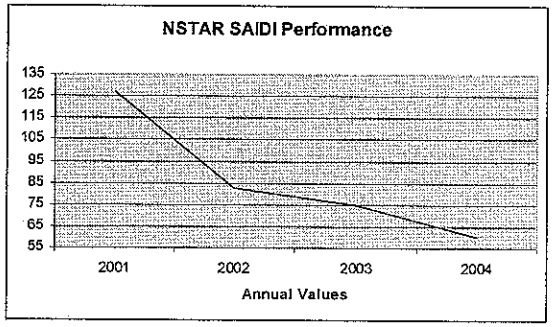
The Company has also taken specific steps to better focus on the Company's core responsibility, which is the distribution of safe and reliable electric and gas service. For example, the Company has consolidated its former System Dispatch Department with its Trouble Response Department to create a new Electric Service Department, which is now better equipped to restore electricity more quickly when an outage occurs. This new department has streamlined NSTAR's trouble-response practices with a "first responder approach" to return service to customers more quickly and has improved the Company's ability to manage outage situations through new outage management systems and management staffing.

In fact, NSTAR Electric has spent approximately $1.2 billion on electric-system improvements since the beginning of NSTAR Electric's Service Quality plans in 2001. These efforts have allowed NSTAR Electric to gain a better understanding of the performance of its distribution system and to prioritize more effectively its capital investment. Specific system improvements include over 1 million feet of new wire and cable, thousands of new distribution transformers, over 6,000 pole replacements, added and enhanced distribution automation switches, and more aggressive tree trimming efforts. NSTAR Electric has also substantially increased the capacity of its transmission system through efforts such as the current initiative to build a new 345kV transmission line from Stoughton to Boston, MA.

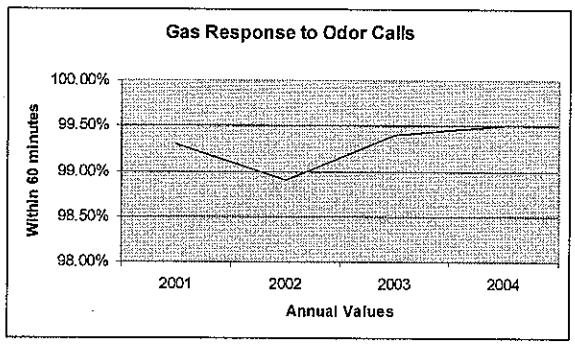
NSTAR has also upgraded its technology and added key business systems to help the Company capture, analyze and deliver services to customers. The Company has implemented a system-wide outage management system and has augmented that system with a graphical analysis tool that greatly improves the time for dispatchers to analyze outage calls and pinpoint causes of outage situations. This system allows the Company to both: (1) promptly dispatch the right resources to the right places to bring the lights back on much faster; and (2) better communicate to customers estimated times of restoration and information about the system problems.

As demonstrated below, the Company's comprehensive efforts since 2001 to improve system reliability has reduced customer outage frequency by nearly 40 percent and reduced outage restoration time by nearly 30 percent.[1]

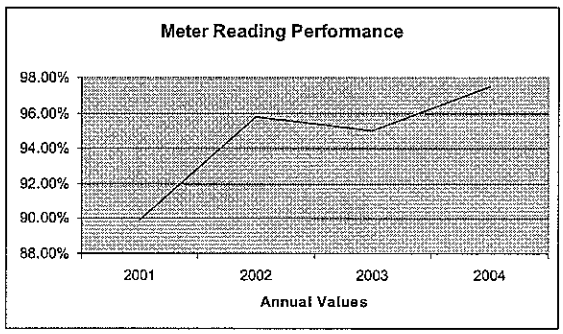




1 Moreover, NSTAR Gas has also maintained a consistently high level of performance in responding to odor calls since 2001 (see below).



In addition to improved system reliability, the Company has realized increased service quality relating to its other customer services. The Company has improved its call center representatives' ability to successfully respond to customers through the installation of a new customer relationship management system called Galaxy. Moreover, as demonstrated below, the Company's meter reading performance has steadily improved since 2001, setting record highs in the past year, primarily due to the installation of over 170,000 automatic meter reading ("AMR") devices.



In fact, AMR technology has greatly improved the Company's ability to capture an accurate meter read every month so that customers can be provided with a reliable accounting of their energy usage and costs.

These examples of NSTAR's efforts to improve service quality are directly related to the implementation of the Department's SQ Guidelines in 2001. Although there is always room for improvement,[2] the Department's SQ Guidelines have provided a sound basis for gas and electric companies to plan for and implement programs for maintaining and/or improving service quality over the long-term. The operational planning and investment that is required to comply with the Department's SQ Guidelines is a long-term prospect that requires stability in the plan. Accordingly, the Department

2 The Company's responses to the Department's questions provide specific recommendations for improving the Guidelines in some areas.

should carefully consider potential changes to its SQ Guidelines so that companies are able to be assured of a level of stability over time in implementing successful service-quality programs.

II. GENERIC RESPONSES TO DTE QUESTIONS ON SQI

1. Offsets: *Currently, if an LDC incurs a potential penalty for substandard performance in a penalty provision measure, the Guidelines allow that LDC to offset that penalty if the LDC exceeded its benchmark in other penalty provisions. Please discuss whether the offset provision offers an incentive for an LDC to improve SQ and whether the use of penalty offsets should be continued in the future Guidelines.*

The offset component of the service-quality penalty mechanism serves two important functions and should be continued in future Guidelines. First, the Department adopted the offset component for a specific purpose, i.e., to address concerns regarding the mathematical underpinnings of the standard-deviation calculation used to establish the performance deadbands. With only three years of additional data available, these concerns are undiminished, and therefore, the need for this "safeguard" remains unchanged in terms of future guidelines. Second, the offset component provides an incentive to improve service quality, even though the incentive is not strictly monetary. Both of these points are discussed in detail below.

A. The Underlying Need for the Offset Component Remains Unchanged

In Service Quality Guidelines, D.T.E. 99-84 (2001) ("D.T.E. 99-84"), the Department linked the inclusion of the offset provision to concerns regarding the accuracy of the deadband calculation. D.T.E. 99-84, at 28. With only three additional data points in hand since the conclusion of the D.T.E. 99-84 proceeding, the concerns over the accuracy of the deadband calculation have not been abated. Therefore, in determining whether offsets should be included in future guidelines, it is important to

give consideration to the overarching design and operation of the service-quality program as it was initially conceived and implemented by the Department in D.T.E. 99-84.

Early in the Department's efforts to devise a generic service-quality measurement system, the Department identified the need to establish a "deadband" around a utility's historical average performance to differentiate normal year-to-year variations in utility performance from actual degradations in service, before penalties would be assessed. D.T.E. 99-84, at 47 (August 17, 2000) (the "Interim Order"). Normal year-to-year variations in performance occur because weather, price volatility, economic cycles and a range of other external factors beyond the control of management have an impact on the level of service required by customers at any given time. Interim Order at 47; D.T.E. 99-84, at 27. For example, extremely cold or stormy weather can cause service outages and can generate a substantial increase in the numbers of customers calling the company and/or requesting service visits. See, id.; Initial Joint Comments of Utilities at 23-24, Appendix B at 3-5 and 6-7 (filed November 10, 2000) ("Initial Comments"); Supplemental Joint Comments of Utilities at 4 (filed June 6, 2001) ("Supplemental Comments"). Sometimes a utility may be faced with increased service requirements stemming from a number of external factors in combination. Id. Because the utility cannot always foresee these events, the utility has no ability to control or avoid variations in performance on a year-to-year basis. Id.

The utility's inability to control for these external factors is important because the Department has founded the penalty mechanism on the underlying premise that management has control over the level of service-quality provided to customers and that the imposition of penalties will influence management decisions on service-related

issues. D.T.E. 99-84, at 29; Interim Order at 44-47, 49 at fn.37. In that regard, the Department has stated that the purpose of SQ penalties is to "provide an impetus for gas and electric companies to conduct themselves in such a way that there is no need to impose monetary penalties in the first place." D.T.E. 99-84, at 29, fn.27. The Department has also stated that "companies seeking to avoid penalties have a readily available remedy, which is to "conduct their business in a manner that maintains SQ measures and avoids the imposition of penalties. D.T.E. 99-84, at 29. Thus, a critical underpinning of the overall service-quality program is that utilities will be assessed penalties only where (1) there is a level of certainty that service has actually degraded below historical levels (Interim Order at 43, 47); and (2) the degradation in service is under the control of management. Interim Order at 49; D.T.E. 99-84, at 29, fn.27. Accordingly, the inclusion of deadbands in the overall design of the penalty structure is explicitly intended to ensure that utilities are not penalized for events or circumstances that have a negative impact on service-quality performance, but are not caused by the utility, nor are under the utility's control.[3] D.T.E. 99-84-B at 2, 5; D.T.E. 99-84, at 27.

To establish the deadband, the Department adopted the approach of computing a "standard deviation" using the utility's own, available historical performance data. D.T.E. 99-84, at 3. Standard deviation is a mathematical construct that measures the amount of variation in a data set based on the collective difference between the individual data points and the average (or mean) of the data set. See, D.T.E. 99-84, at 23-26. See, Joint Initial Comments of the Utilities at 25, Appendix B at 9-12, 21-22; Joint

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3 This is referred to as a "Type I" error. A "Type I" error occurs when a utility is penalized for a measurement that deviates from the historical benchmark and the deviation is a result of random variation in the data rather than an actual deterioration in the service-quality efforts of the utility. D.T.E. 99-84, at 27, fn.24.

Supplemental Comments at 5-7. However, the record in D.T.E. 99-84 was clear and comprehensive on the point that standard deviation is not a statistically valid concept where there are relatively few available data points. Under generally accepted mathematical principles, at least 30 data points are needed for a valid calculation of a standard deviation. D.T.E. 99-84, at 22; Supplemental Joint Comments of the Utilities at 6, citing Statistical Concepts and Methods, G. Bhattacharyya and R. Johnson (1977). This is because there is little statistical confidence that the (limited) data set encompasses the performance data points that the utility would normally record under the full range of external factors affecting the utility's operations. Id.

If the actual variability of a utility's performance data is not captured in the standard-deviation calculation, there is an increased possibility that the utility will be penalized for performance that simply varies from the historical average rather than representing a deterioration of service. Id. at 22-23. In adopting the standard deviation approach, the Department explicitly recognized that the use of "company-specific historical data" would "necessarily result in sample sizes of ten [years] or less." D.T.E. 99-84, at 27. In addition, the Department noted the "statistical probability that the standard deviation approach will result in a 16 to 18 percent chance of Type I errors," in light of the limited available data. D.T.E. 99-84, at 27-28. Accordingly, the Department found that:

> In order to provide an additional safeguard against the probability of a company being subject to a SQ penalty for random variations in performance, the Department shall incorporate an "offset" feature to the penalty mechanism. . . . The Department considers a standard deviation approach that includes a system of monetary offset credits best achieves our goal of balancing the risk of Type I errors with the risk of Type 2 errors.[4]

D.T.E. 99-84, at 28.

With an asymmetrical system, random variations in the data have the potential to cause unwarranted penalties, but have no potential to put the utility into an "upside" position. This is inherently unfair and unreasonable because, under the standard-deviation approach (with limited data points): (1) there is no certainty that service has actually degraded below historical levels; and (2) there is no reliable indication that management has done anything to influence its performance negatively. The offset component is designed to provide the utility's management with an opportunity to use the upside potential to offset the downside potential of inappropriate penalties. D.T.E.99-84, at 28. Accordingly, the Department's decision to incorporate the offset provision was one of fundamental fairness given the record evidence contesting the accuracy of the standard-deviation computation when based on limited historical data.

At the time the Department adopted the offset provision, the historical data available was limited or non-existent, with a maximum of five or six years available for one or two measures.[5] See, e.g., D.T.E. 99-84, at 5-6, fn.6, 27-28. The Department explicitly provided that there is a statistical probability that the standard-deviation

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4 A "Type 2" error occurs when a degradation of service occurs but goes undetected and un-penalized. D.T.E. 99-84, at 27, fn.24.

5 For example, most electric utilities had been collecting data on SAIDI and SAIFI statistics for a period of time prior to the Department's establishment of the service-quality guidelines. But even in the case of SAIDI and SAIFI, no more than five or six data points were available. Some companies also possessed several years of call answering data.

approach will result in a 16 to 18 percent chance of Type I errors. D.T.E. 99-84, at 27-28; SQ Guidelines at Section I.C. Therefore, the Department adopted the offset provision to act as a "safeguard" against inappropriate penalties. D.T.E. 99-84-B at 2; D.T.E. 99-84, at 28. Although the utilities, including NSTAR, have accumulated up to three more years of data since the Department commenced the SQ Plans in accordance with D.T.E. 99-84, the overall amount of available data still falls far short of what is needed to ensure the mathematical integrity of the standard-deviation calculation.

Accordingly, the Department's rationale for adopting an offset mechanism in D.T.E. 99-84 continues to apply in 2005 – and for the foreseeable future. Deadbands are an indispensable element of the Department's SQ program because there is an acknowledged need to allow for normal year-to-year variability in the performance data. Under the Department's SQ program, deadbands are calculated using a standard-deviation computation that relies on a utility's own historical data. Since the amount of historical data available is extremely limited in comparison to the number of data points needed to ensure the validity of the standard-deviation calculation, there is no way to fairly and reasonably ensure that the utility will not be penalized for normal variations in performance, except to allow the utility to use the "upside" potential of this uncertainty to offset penalties. Therefore, because the need for this "safeguard" remains unchanged, any decision by the Department to discontinue the use of penalty offsets will undermine the integrity of the Department's overall service-quality regime.

B. The Offset System Provides an Incentive to Improve Service

In addition to providing a safeguard against inappropriate penalties, the offset provision provides an incentive to utilities to strive to improve performance. There are

three main reasons that this incentive exists. First, there are instances where the utility may be in a penalty position on a particular measure as a result of one-time operational changes or other singular events that are not outside the utility's control, but are also not the result of service degradations. For example, if the utility decides to change its practices to be more aggressive on the collection of overdue customer accounts, it may experience a marked increase in customer calls that ultimately could result in reported annual performance beyond the deadband threshold. The symmetrical offset provision gives the utility the incentive to work to increase service on other measures to mitigate the effect of this one-time operational change.

Second, the offset provision is effective in signaling above-average performance to employees, customers, shareholders and the Department. Although the primary (and statutory) purpose of the service-quality program is to ensure against a degradation of service under a performance-based rate plan or merger-related rate plan, many companies have used the service-quality requirements to set internal goals for improved company performance. Many companies including NSTAR have established new internal departments to measure, track and report service-quality performance statistics. Service-quality targets are known throughout NSTAR and are used to communicate to all employees, and are used annually in assessing company and management performance. Thus, the symmetrical offset component provides a basis for quantification of the success of these efforts. In addition, utilities are able to provide verifiable and objective information to customers (and the Department) on both the successes and challenges they face in providing service to customers. Therefore, the symmetrical offset system,

although non-monetary, serves an important function and should be continued in future Guidelines.

Lastly, the offset component serves an important function in counterbalancing an idiosyncracy of the Department's benchmark system. Specifically, an issue arises under the Department's current benchmark system because the historical average and standard deviation for benchmarking are based on a utility's ten most recent years of data. Service Quality Guidelines at Section I.C (hereinafter, "SQ Guidelines"). Therefore, if a utility has 10 years of data available for a particular measure, the benchmark is fixed for the "duration of the PBR." Id. However, if the utility has less than 10 years of annual data available, new performance data is rolled in to the historical average on a year-to-year basis until such time that 10 data points are incorporated into the benchmark. Id. The dynamic that occurs with the continual incorporation of new performance data is that the benchmark may be raised above historical levels in circumstances where the utility has greatly improved its service after the commencement of the SQ Plan. With an ever-increasing benchmark, there is the potential that a utility could be penalized for service that falls below the new deadband threshold, but in fact, is at a level that exceeds the level of service provided to customers at the outset of the PBR Plan.[6]

In light of this dynamic, the offset component of the penalty becomes important because it provides an opportunity for the utility to offset penalties that may result from this dynamic with improved performance on other measures.

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6 Utilities recognize that there is really no way around this dynamic because: (1) it is vital that benchmarks be established using as much historical data as is available to ensure that the deadband computation accurately and fully captures the level of variation that occurs on a distribution system as a result of external business factors; and (2) the Department's SQ framework is new and data must be collected and incorporated into the benchmark to reach the 10-year threshold. Once the 10-year threshold is reached and the benchmarks are fixed, this should not continue to be an issue.

C. Corrections to the Current Offset System

There are two corrections to the Department's deadband construct that should be given some consideration. First, the Department should consider addressing the lack of symmetry of the offset system on measures where a utility's performance is relatively high, and as a result, the upper threshold of the deadband nears or exceeds the 100 percent mark. In these instances, the utility cannot achieve all or part of an offset because the offset crosses over the 100 percent mark; however the utility is subject to 100 percent of the potential penalty. Thus, if the deadband is not accurately capturing the full range of variability in performance data that the utility would experience in the normal course of operations, the utility could be penalized inappropriately and the coinciding offset to balance that risk is not available for that measure.

For example, Cambridge Electric Light Company may have a benchmark for consumer division cases of 0.241 cases, and a standard deviation of 0.137 cases. This means that the offset should be available if the Company is able to reduce consumer division cases by more than one standard deviation, or by more than 0.137 cases (i.e., the number of consumer division cases is reduced to 0.104 cases), with the maximum offset occurring at two standard deviations from the benchmark. However, two standard deviations from the benchmark would require performance at -0.033 cases, which is impossible. Accordingly, Cambridge Electric has the potential to be penalized to the maximum of two standard deviations, but does not have the maximum coinciding offset available because the deadband threshold exceeds 100 percent.

An additional example for Cambridge Electric relates to its Billing Adjustments deadband. The benchmark for Billing Adjustments is set at $7.47 dollars per 1,000

residential customers with a standard deviation of $9.03 dollars per 1,000 residential customers. In this case, no offset is available at all because Cambridge Electric would have to reduce billing adjustments to -1.56 dollars per 1,000 customers in order to exceed the minimum standard deviation threshold and obtain any coinciding offset. Accordingly, Cambridge Electric is subject only to penalties and has no offsets available to act as the safeguard against the possibility that the standard-deviation computation is based on too few data points, and therefore, fails to capture the level of variation in the performance data that the utility actually will experience over time through no fault of its own. To resolve this dilemma, the Department should consider pro-rating the maximum offset that would be available under a symmetrical system over the potential performance range between the deadband threshold and 100 percent performance. Using the billing adjustments example, the standard deviation value could be set to equal to ½ the benchmark value. The minimum offset would be reached at $3.74 (1/2 the benchmark of $7.47), and a maximum offset if the performance for the year is obtained at $0. Alternatively, the Department should consider disallowing penalties to be incurred for any measure where offsets cannot be achieved, such as for Cambridge Electric's Billing Adjustments.

The Department should also consider tailoring its offset system to address issues that may arise where a utility has a very tight deadband relating to its historical performance in a particular service quality category. In these instances, a minor deviation in performance, either positive or negative, could place a company in a penalty or offset situation. To rectify this, the Department should consider establishing a minimum deadband of plus/minus 1 percent for each service quality measure subject to

penalty and offsets. This would guard against a utility being subject to penalties in years where its performance deviated negatively only slightly from its benchmark in a particular category, because of the narrowness of the deadband in that particular category. Conversely, it would prevent the utility from earning offsets for only slightly improved performance in the same category.

2. Odor Calls: *Currently, the benchmark for odor calls is 95 percent, which is an obtainable goal of all gas LDCs. Please discuss whether this benchmark should be strengthened in the future Guidelines and SQ plans and whether multiple calls regarding a single gas leak should be considered as a single odor call response.*

In the natural gas local distribution industry, there is no higher priority for the gas utility than responding to odor calls as quickly as possible. Therefore, it is not surprising that the 95 percent benchmark is not only "obtainable" by LDCs, but is surpassed by LDCs on a year-to-year basis. In that regard, the existing "95 percent" benchmark for responding to odor calls is an appropriate standard because (1) all of the LDCs' historical performance data is based on this standard; (2) the standard is generally accepted throughout the gas industry; and (3) the standard has ensured the safe and reliable delivery of gas to customers in the Commonwealth since its adoption by the Department in D.T.E. 99-84. Moreover, the fact that a particular service-quality goal is "obtainable" is not a basis for setting a higher performance benchmark, unless the main objective of the higher benchmark is to create a greater potential for the utility to be penalized. Accordingly, the existing standard should be continued in future guidelines.

In D.T.E. 99-84, the Department stated that "public safety concerns make it essential for gas distribution companies to achieve and maintain a high performance

standard for odor call response times." D.T.E. 99-84, at 39. Therefore, the Department explicitly rejected the use of a company's historical performance in computing the deadband and set a uniform "95 percent" standard for all gas companies operating in the Commonwealth. Id.; D.T.E. 99-84-B at 7. This determination reflected that fact that most, if not all, of the Massachusetts LDCs had been measuring response times in accordance with this standard for several years prior to the Department's generic proceeding in D.T.E. 99-84, and therefore, the standard was consistent with the historical data maintained by the companies. Moreover, this standard is generally accepted in the gas distribution industry. See, e.g., The Massachusetts Electric and Gas Distribution Companies, *Summary of Findings Related to Service Quality Benchmarking Efforts* at 7 (filed with the Department on December 19, 2002). As a result, it was reasonable and appropriate for the Department to establish the 95 percent benchmark on a statewide basis in D.T.E. 99-84.

As noted above, the fact that a particular service-quality goal is "obtainable" is not a basis for setting a higher performance benchmark. There is no indication that leak-call response times are too long because the 95 percent is "obtainable," and is therefore causing harmful impacts to the public safety and welfare. There has been no instance where NSTAR Gas's response to an odor call in conformance with the standard has resulted in a gas incident causing personal injury or harm to property. As demonstrated by the performance statistics reported by the LDCs over the past three years, the LDCs are diligent in their efforts to respond to gas odor calls as quickly as possible, and as a result have consistently exceeded the 95 percent benchmark. Accordingly, there is no

substantive basis to suggest that a change is necessary or warranted to address a public safety concern.

The Department has previously stated that, "the purpose of SQ penalties is not to maximize the level of penalties collected, but to provide an impetus for gas and electric companies to conduct themselves in a way that there is no need to impose monetary penalties in the first place." D.T.E. 99-84, at 29, n. 27. The performance statistics of the gas companies confirm that the 95 percent benchmark has provided a strong "impetus" for gas companies to conduct their operations in a manner that should occur even without the Department's service-quality penalty mechanism. Id. Thus, in addition to being consistent with industry practice and imposing a uniformly high standard on all gas companies, the Department's 95 percent benchmark has achieved the precise objective that the Department identified in initiating the service-quality program. Accordingly, no change to the standard is necessary or warranted in future guidelines.

With regard to the second part of the Department's question, it is important to note that gas companies serving customers in the Commonwealth generally treat multiple calls relating a single gas leak as a single odor call response, to the extent that the utility is able to determine (at the time of the incident or through later review) that the succession of calls incoming to the company are stemming from the same location. It is NSTAR Gas's experience that it is a minority of cases where multiple calls for the same leak are received. In these cases, the response time is measured from the point that a work order is opened upon the receipt of the first call to the point that a field representative arrives at the site. Accordingly, no change to the guidelines is warranted or necessary.

3. Staffing Levels: *G.L. c. 164, § 1E (a) requires the Department to establish benchmarks for staff and employee levels of LDCs, and G.L. c.164, § 1E (b) requires that no company may reduce its staffing levels below what they were on November 1, 1997. However, the statute does not define what staffing levels are, e.g., whether they apply only to union employees or to all employees; whether staffing levels should include employees of non-regulated subsidiaries of the LDCs; and whether the lapse in time (between enactment of the statute and adoption of a performance-based rate plan) negates the November 1, 1997 requirement. Further, the statute does not provide for any penalty for the LDCs that do reduce their staffing levels below 1997 numbers. Please discuss the role of staffing levels in the future Guidelines.*

The Department's current system of monitoring staffing and service-quality levels fulfills the statutory mandate set forth in G.L. c. 164, § 1E (a), and therefore, no change is necessary in future Guidelines. To meet the requirements of the statute, the Department has established a three-tiered structure involving: (1) a comprehensive service-quality program to detect and penalize companies for degradations in service (SQ Guidelines at VII); (2) the establishment of a benchmark staffing level as of November 1, 1997 and annual reporting of staffing levels in each year thereafter (SQ Guidelines at IV); and (3) a formal investigation into the causes and circumstances of a service decline in any case where performance falls below the established guidelines (SQ Guidelines at VII.A).

This structure satisfies both the stated and implied requirements of Section 1E (a) because it recognizes that there is not necessarily a direct correlation between service-quality levels and reduced staffing, and therefore, the trigger for Department action is a demonstrated decline in service quality, rather than a change in staffing levels. In addition, the Department's system is a reasonable approach to resolve the inherent tension between the underlying purpose of PBR, i.e., to maximize efficiency gains and cost reductions, and the need to ensure that staffing levels are adequate to maintain the quality of service for customers.

A. Statutory Requirements

To determine both the explicit and implicit requirements encompassed in G.L. c. 164, § 1E (a), it is important to consider the language of the statute within the context of the regulatory scheme the Department has established for distribution companies operating in the Commonwealth. In that regard, Section 1E(a) states in relevant parts that:

> (a) The department is hereby authorized to promulgate rules and regulations to establish and require performance based rates for each [gas company]. . . . **In promulgating such performance based rate schemes,** the department shall establish service quality standards for each [company]. . . . [S]uch service quality standards shall include benchmarks for employee staff levels . . . .
>
> (b) In complying with the service quality standards and employee benchmarks established pursuant to this section, a [company] that **makes a performance based rate filing after the effective date of this act** shall not be allowed to engage in labor displacement or reductions below staffing levels in existence on November 1, 1997, **unless such are part of a collective bargaining agreement** or agreements between such company and the applicable organization or organizations representing such workers, **or with the approval of the Department following an evidentiary hearing at which the burden is on the company to demonstrate that such staffing reductions shall not adversely disrupt service quality standards** as established by the department herein.

G.L. c. 164, § 1E (emphasis added). Thus, as an initial matter, Section 1E (a) does not impose the unqualified rule that "no company may reduce its staffing levels below what they were on November 1, 1997," as suggested by the question. Rather, the statutory language explicitly establishes the following:

a. The Department may establish PBR plans for companies under its jurisdiction;
b. For companies commencing PBR plans after November 25, 1997 (i.e., the effective date of the Act), the Department must establish service-quality standards;
c. The Department's PBR-related service-quality standards must include a staffing level "benchmark," established as of November 1, 1997;

d. A company operating under a PBR plan that commenced after November 25, 1997 may reduce staffing levels from the November 1 level, if: (1) those reductions are part of a collective bargaining agreement(s); or (2) the utility can demonstrate that service quality is not adversely affected;

Based on the efforts commenced by the Department following the enactment of the Restructuring Act, the Department has fulfilled each of these four requirements. Specifically, the focus and intent of the Department's generic proceeding in D.T.E. 99-84 was to develop guidelines for SQ measures to be included in PBR plans submitted by gas and electric companies pursuant to Section 1E (a). D.T.E. 99-84, at 40. As a result, the Department's SQ Guidelines satisfy the first and second requirements set forth above.

Further, as part of its clarification order in D.T.E. 99-84, the Department directed distribution companies to submit SQ plans with staffing level benchmarks based on staffing levels in existence on November 1, 1997, except as provided by collective bargaining agreements or other statutory provisions. Order on Clarification, D.T.E. 99-84-B, at 12-13 (2001). The reporting of staffing levels on an annual basis beginning November 1, 1997 addresses the third requirement set forth above.

With respect to the last requirement, the statute provides that staffing levels may be reduced if: (1) accomplished pursuant to a collective bargaining agreement; and (2) if the utility demonstrates that reductions have not affected service quality. In that regard, the Department has stated that staffing levels will be determined consistent with Section 1E (b), primarily by collective bargaining agreements, and on a case-by case basis. D.T.E. 99-84-B at 12. The Department's findings on this point are appropriate because the existence of a currently effective collective-bargaining agreement is prima facie evidence that bargaining-unit staffing reductions are being implemented by a

company as part of the agreement. No further action by the Department is necessary, warranted or appropriate in relation to bargaining-unit staffing levels.

Aside from collective bargaining agreements, the statute allows utilities operating under PBR to reduce staffing levels where there is a demonstration that the reductions will not affect service quality. With the SQ Guidelines in place, the Department is able to monitor the interrelation between service-quality levels and staffing levels without inhibiting a utility's ability to make staffing decisions aimed at streamlining and maximizing the efficiency of its operations. The Department is also able to detect and penalize companies for deficient service quality and to investigate whether staffing levels are a contributing factor to the service deficiency. Accordingly, the framework established in the Department's existing Guidelines fulfills the final requirement of Section 1E (a).

B. Response to the Department's Specific Questions on Staffing Benchmarks

The question posed by the Department in this proceeding asks for specific input on the following points: (1) the statute does not define what staffing levels are, e.g., whether they apply only to union employees or to all employees; (2) whether staffing levels should include employees of non-regulated subsidiaries of the LDCs; (3) whether the lapse in time (between enactment of the statute and adoption of a performance-based rate plan) negates the November 1, 1997 requirement; and (4) the statute does not provide for any penalty for the LDCs that do reduce their staffing levels below 1997 numbers. All of these issues are addressed with the Department's existing SQ Guidelines given its emphasis on (1) the measurement and quantification of service-quality performance in comparison to historical performance data; and (2) the identification of a decline in

service quality as a prerequisite to an investigation into the reasons for that service decline, including reduced staffing levels.

Specifically, it is important to consider that the underlying concern of the statute, as well as the Department's efforts on PBR, is that there should be no decline in service quality as a result of a utility's cost-cutting efforts. Interim Order at 3-4. Because it is really the decline in service quality that is the concern, it is not reasonable to establish staffing level reductions as the trigger for an investigation into the impact of those reductions. Rather, to be consistent with the fundamental purpose of PBR, the appropriate trigger for an investigation by the Department into the linkage between staffing levels and service quality is the deterioration of utility performance in comparison to historical levels. The Department's SQ framework deals with this linkage effectively because the performance measures cover a range of utility activities, and therefore, allow the Department to first pinpoint whether there is a service-quality problem in a specific operational area and then to determine whether staffing levels *in that area* may have had an impact on the utility's performance on that particular measure. Without an indication that service-quality has deteriorated, there is no basis for the Department to conclude that staffing reductions are inconsistent with the statute because utilities are explicitly allowed to reduce staff where it is demonstrated that service-quality is not impaired.

Therefore, under the Department's existing framework, there is no need to "define what staffing levels are," or to determine whether it applies to union employees, employees of unregulated operations or all employees. The level of service quality provided by a utility is not necessarily a function of the number of people employed by

the utility at any level or subdivision of the company. A company may reduce staff without causing the slightest change in the level of service provided to customers because, in practice, staffing levels and service-quality levels may be wholly unrelated. The Department's focus on first identifying a service-quality problem and then determining whether staffing levels in that area are a contributing factor to the service-quality problem obviates the need to determine whether the statute is referring to a particular category of employees.

Similarly, the Department's framework is an effective tool to address the fact that, over time, the staffing level existing as of November 1, 1997 will have little connection or relevance to the utilities' ongoing operations. Even in just the past seven years, the gas and electric distribution industries have experienced dramatic change as a result of the unbundling of utility services, asset divestitures, the implementation of technological improvements, the emergence of competitive markets and mergers and acquisitions. These events have caused fundamental changes in the structure of utility operations and have provided substantial opportunities for utilities to cut costs through staff reductions.[7] The Department's SQ Guidelines ensure that these changes occur without any detriment to customers in terms of service-quality levels.

Lastly, under the Department's structure, utilities are penalized if staffing reductions cause the level of service provided by the utility to fall below historical levels. This is important because "cause and effect" is the only basis for the Department to take action under the statute in relation to staffing levels. The statute does not suggest that the Department has authority to penalize companies for staff reductions below the

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7 For the most part, these reductions have been achieved through attrition and voluntary employee severance plans and not through actions by the utilities to cut staff.

November 1, 1997 level in the absence of a determination that those reductions have caused a service-quality problem, nor would it be reasonable to make such a suggestion. In fact, the statute explicitly allows staffing reductions after November 1, 1997, if those reductions do not affect service quality. The Department's existing penalty framework already incorporates an appropriate sanction for staffing level reductions that lead to a deterioration in service-quality levels.

Under the Department's existing framework, the focus is appropriately placed on the level of service currently provided by utilities and the comparison of those levels to performance benchmarks based on the utility's own historical service data. Accordingly, the Department has reasonably and appropriately incorporated the statutory mandate regarding staffing level benchmarks into the SQ Guidelines and no change is necessary or warranted in future guidelines.

4. Standardization of SQ Performance Benchmarks: *In D.T.E. 99-84, at 3-4, the Department required that LDCs collect any data that may be necessary for the Department to revisit, in the future, the issue of using benchmarks based on nationwide, regionwide, or statewide data. The LDCs sent the Department a report on December 19, 2002 concluding that using the historical performance of each LDC on the respective performance measures remains the best method for establishing performance benchmarks. Summary of Findings Related To Service Quality Benchmarking Efforts, Navigant Consulting, Inc. (December 19, 2002). Please comment.*

There is an important distinction between the standardization of "performance measures" and the establishment of uniform or comparative "performance benchmarks." In terms of establishing the benchmark against which a utility's performance will be measured on a year-to-year basis, the findings of the Report submitted to the Department on December 19, 2002 by the gas and electric utilities remain applicable today, i.e., the historical performance of gas and electric companies operating in the Commonwealth is

the best data available for the development of valid and appropriate performance benchmarks.

The overarching design of the Department's SQ framework is that it establishes a system to: (1) measure service quality; (2) assess whether, on a year-to-year basis, a utility is maintaining, improving or declining in relation to the expected (historical) level of service; and (3) penalize utilities that have not taken the actions necessary (and under their control) to maintain service quality at historical levels. Interim Order at 43-49. Under this system, the establishment of valid and appropriate performance benchmarks is vital to the integrity of the overall SQ system because without valid benchmarks, there is no way to determine whether a utility's performance is actually improving, declining or staying the same – and in turn, no basis for the imposition of SQ penalties (or offsets).

In the *Summary of Findings Related To Service Quality Benchmarking Efforts* (Navigant Consulting, Inc.), filed with the Department on December 19, 2002 (the "Benchmarking Report"), the distribution companies provided the Department with a comprehensive evaluation of the potential for using national, regional or statewide data to establish uniform or comparative performance benchmarks across the utilities serving customers in the Commonwealth. Benchmarking Report at 1-2. In the Benchmarking Report, the distribution companies detailed their efforts to review information from other state jurisdictions, federal agencies,[8] commercial data resources and industry associations[9] in order to determine whether there was any basis to establish performance

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8 Federal agencies included the Department of Energy, the Department of Labor, the Federal Energy Regulatory Commission, and the Occupational Safety and Health Administration.

9 Industry associations included Electric Edison Institute, the Institute of Electrical and Electronics Engineers, the American Gas Association, the National Regulatory Research Institute and the National Association of Regulatory Utility Commissioners.

benchmarks on something other than historical company-specific performance data. Id. at 3-4, 7-12. The Benchmarking Report concluded that there are significant limitations in terms of the validity and applicability of using national, regional and statewide data to establish uniform or comparative performance benchmarks. Id. at 13-14, 16-22, 23-24.

Specifically, the Benchmarking Report concluded that there are inherent differences among utilities in terms of data-collection methods, data quality, geography, distribution system design and configuration and weather impacts that make it virtually impossible to establish standardized performance benchmarks that would have validity in terms measuring (and penalizing) the performance of a specific Massachusetts-based utility. Benchmarking Report at 13, 16-23. These differences are significant because it is not possible to make comparisons among utilities if, for example, they are not computing the performance statistics in the same way or are not operating under the same economic, business and natural environments. Id. at 16. Similarly, a uniform benchmark is not appropriate where utilities are faced with differing operational, demographic and geographic challenges. Id. at 16-23.

None of these considerations have changed in the three years since the Department's ruling in D.T.E. 99-84. Although the Department and various industry groups have made progress in terms of the standardization of performance measures through the adoption of common definitions and data-collection practices, nothing has occurred since the filing of the Benchmarking Report to change the fact the only feasible and analytically sound approach to evaluating a utility's performance is to compare its current performance to its past performance, as demonstrated in the Benchmarking Report.

In fact, if the Department were to move to a system of uniform benchmarks, it would represent a fundamental shift in the underlying theory of the Department's service quality policies. The Department's service quality policies presume that customers are due a particular level of service based on the rates that they pay to the utility to provide that service. Those rates recover historical costs incurred by the utility to provide service to its customers.

Accordingly, the Department has analogized the payment of penalties relating to degraded service quality to the payment of liquidated damages in contract law, noting that "compensation takes the form of the delinquent utility's sacrifice of a pre-ordained percentage of revenues." Interim Order at 44. If the Department were to set benchmarks based on uniform standards, unrelated to a utility's historical performance, the Department would be de-coupling the link between the provision of service and the utility's historical incurred costs to provide that service. Therefore, for this reason and the reasons outlined above, the Department should not establish uniform benchmarks to measure service quality performance.

5. SQ Incentives:..*Please comment as to whether any LDC should be allowed to collect incentives for SQ performance. MECo and Nantucket Electric Company (collectively "MECo"), are allowed to collect incentives back from ratepayers if it exceeds its benchmarks in the penalty provisions. The Department approved incentives as part of MECo's SQ plan because MECo's prior SQ plan, pursuant to Massachusetts ElectricCompany/Eastern Edison Company, D.T.E. 99-47, at 13, 31-32 (2000), contained penalty/reward structures, and in consideration of the potential benefits to ratepayers. D.T.E. 01-71B at 24 (2001).*

The Department should consider the adoption of a symmetrical system of financial penalties and rewards as part of its SQ Guidelines for two main reasons: (1) the possibility of collecting a financial reward for service-quality improvements will provide

a strong incentive to utilities to move forward with service-related investments that benefit customers; and (2) the potential for a financial reward will offset the impact of penalties that have the potential to result where the utility is held to an ever-increasing performance benchmark during the term of a SQ plan. Moreover, it is well within the Department's authority to establish a symmetrical penalty and reward system should the Department determine that such a system would provide benefits to customers.

In Massachusetts Electric Company, D.T.E. 01-71B (2002), the Department approved an SQ plan that included the payment of financial incentives under certain circumstances. D.T.E. 01-71B at 22. In doing so, the Department noted that the financial incentive would provide the opportunity for the utility to "recover some of its costs" and, as a result, would encourage the company to make investments designed to improve service quality over time. Id. The Department's observation is on target because the availability of a financial reward will provide a strong impetus for utilities to improve performance over historical levels.

There are three main reasons that this incentive exists. First and foremost is that it takes substantial investment to achieve improvements in service quality in excess of the deadband threshold of one standard-deviation. With most performance measures, the utility may be able to make smaller, less costly changes to produce marginal improvements in the level of performance historically achieved by the utility. However, it is generally impossible to achieve performance that is greater than one standard deviation over the historical level without purchasing a new information system, installing new equipment or investing significant resources into distribution infrastructure and facilities. The availability of a financial reward would act to defray the cost of the

investment required to achieve the service-quality improvement, even if the reward is relatively small in comparison to the cost of the system upgrade or infrastructure investment.

In that regard, the Department noted its concern in both D.T.E. 01-71B and D.T.E. 99-84 that a penalty/reward system would have the potential to motivate significant investment while producing only marginal benefits. D.T.E. 01-71B at 23; D.T.E. 99-84 (Interim Order), at 45-46. However, given the types of system investments that are required to achieve such large leaps in service quality, it is highly unlikely that even the maximum financial reward (under the Department's current structure) would go so far in defraying the cost of the investment that a utility would be motivated to make the investment solely because the reward is available.

A second reason that financial incentives would be beneficial is that there are instances where the utility may be put into a penalty position on a particular measure as a result of one-time operational changes or other singular events that are not outside the utility's control, but are also not the result of service degradations. In these cases, if the utility is able to collect a financial reward for improving service quality over historical levels, the utility will be much more likely to engage in one-time operational changes to improve service quality, although the changes may have the potential to cause short-term setbacks in performance during the implementation phase. Currently, utilities are faced with a disincentive to make substantial changes that have the potential to disrupt performance because there is no basis for exclusion of this event from the service-quality performance metrics, and therefore, no way to recoup the penalty dollars even though service to customers may be vastly improved in the future.

A common example of this dynamic is when a utility is considering the implementation of a new customer-service system, which is a highly complex and somewhat unpredictable undertaking in terms of foreseeing all possible contingencies that could occur during implementation. Although the implementation of a new customer-service system requires significant investment, and will ultimately result in better service to customers, there is a strong potential for a utility to be penalized as a result of increased (and unavoidable) customer calls to the company during the implementation phase, which may place the utility in a penalty position – although service quality has not actually "declined." If the utility were to have the opportunity to gain a financial incentive for good performance following system implementation, the utility would have a strong incentive to invest in the system and work to improve service as quickly and efficiently as possible following system implementation. The financial incentive would be meaningful to the utility because: (1) it would defray the cost of the system investment; and (2) it would offset the cost of any penalties incurred as a result of the implementation.

Lastly, like the offset provision, financial incentives would serve to counteract the operation of the Department's "rolling" benchmark system. As noted above, if the utility has less than 10 years of annual data available, new performance data is rolled in to the historical average on a year-to-year basis until such time that 10 data points are incorporated into the benchmark. SQ Guidelines at I.C. With the continual incorporation of new performance data, it is possible that the benchmark will be raised above historical levels in circumstances where the utility has greatly improved its service after the commencement of the SQ Plan. With an ever-increasing benchmark, there is the

potential that a utility could be penalized for service that falls below the new deadband threshold, but in fact, is at a level that exceeds the level of service provided to customers at the outset of the PBR Plan. Financial incentives would provide an opportunity for the utility to offset penalties that may result from the rolling average.

Accordingly, the SQ Guidelines established by the Department should include the reasonable opportunity for utilities to be rewarded for service-quality performance in excess of historical levels. Moreover, because the financial reward system would be triggered only as a result of a demonstrated increase in customer service, reliability or safety, it is well within the Department's authority to allow the recovery of the financial reward. The Department's authority to set rates for customers that allow revenue recovery by the utilities is plenary. G.L. c. 164, §94, see also Boston Edison Company v. City of Boston, 390 Mass. 772 (1984). Customers would be the direct beneficiaries of any service improvements, and therefore, the establishment of a financial incentive is warranted and appropriate.

6. Customer Service Guarantees: *LDCs are currently required to pay $25.00 to any customer if they fail to meet a scheduled service appointment or fail to notify a customer of a scheduled outage. D.T.E. 99-84, at 38. Please discuss whether the future Guidelines should require (a) payment to customers whether or not the customer requests the credit; and (b) classification as a missed service appointment if the LDC contacts the customer within four hours of the missed appointment and re-schedules the appointment.*

A. Payment of Customer Service Guarantees

The Company does not currently make payment of the $25 customer guarantee for missed appointments and planned outages unless by customer request. The Company has implemented the SQ plan in this manner to be consistent with its already established program of Customer Service Guarantees. When the SQ plan was established, the

Company had an existing Customer Service Guarantee program which included a $25 credit on missed service appointments and planned outage notifications, in addition to four other customer service options. That program did not include an automated payment process. However, the process for obtaining a credit was communicated to customers, and continues to be available to customers for review on NSTAR's website.

Therefore, the Company currently does not possess the capability to issue automatic payments without employing a new, manual or automated process. The Company has no objection to this type of requirement in future guidelines, provided that the Department: (1) allow the Company sufficient time to change its systems and processes to allow for automated payments; or (2) allow the Company to demonstrate to the Department that the costs that would be incurred to implement a new system are greater than the benefits of implementing the system change.

B. Classification of a "Missed Appointment"

In future SQ Guidelines, the Department should not require classification of a "missed" service appointment in instances where the distribution company has contacted the customer and rescheduled the appointment. The Company must have some flexibility to schedule and reschedule appointments because there are, at time, extenuating circumstances where the Company cannot keep previously scheduled appointments for non-emergency work.[10] Therefore, if the company has made the effort to contact the customer and reschedule the appointment because of emergent service requirements on a given day, it should not be counted as a "missed" appointment subject to a penalty.

Routine service appointments are scheduled in blocks in advance of the date of the appointment. There is no way for the company to foresee, at the time the appointment is made, what the weather will be on the date in question, nor is there any way for the company to pinpoint precisely the amount of time that a series of appointments will take on the date in question. In addition, the company needs to strike a balance between: (1) booking enough appointments to ensure that as many customers as possible receive a timely service appointment by the company; (2) the productivity of its workforce; and (3) allowing flexibility in the schedule to deal with unforeseen contingencies.

Therefore, the fact that the Company may need to reschedule an appointment does not necessarily mean that the company has fallen short in its commitment to customers, but rather it may mean that field personnel were temporarily diverted to respond to a

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10 For example, during the January 2005 blizzard, the Company was required to reschedule appointments because it was impossible for the Company to drive on certain roadways or access some meters. Another common reason for rescheduling service appointments is to respond to gas odor calls.

competing and (legitimate) service need in the field. Given the complexities and competing service requirements involved in day-to-day scheduling of customer appointments, the Company needs to have a level of flexibility to manage its operations.

Therefore, where the Company has encountered a service contingency and needs to reschedule an appointment with a customer, the company should not be required to count the appointment as "missed" because the company has, in fact, fulfilled its service commitment through coordination with the customer. If rescheduled appointments are classified as "missed appointments," the Company could be faced with a situation where it is placed into a penalty position (and owes guarantee payments to customers), not because there is a decline in service, but because it has had to use available field resources to meet system requirements in areas other than routine service appointments. This could result in fewer appointments being scheduled in order to maintain the flexibility to address competing service requirements occurring during the workday. This is not a reasonable or appropriate result. Accordingly, the Department should not classify rescheduled appointments as "missed appointments" in future guidelines.

7. Property Damage: *The Department established a reporting requirement regarding losses related to damage of company-owned property as it was likely to contribute to assessing company safety performance. D.T.E. 99-84, at 17. Please discuss whether this reporting requirement should be made a penalty measure in the future Guidelines.*

The current requirement to report information regarding damage to company property should not be made a penalty measure in future Guidelines. Currently, the gas companies report property-damage incidents involving damage to Company-owned facilities exceeding $5,000 per incident and electric companies report property-damage incidents exceeding $50,000 because the Department has determined that this information will assist in its review of service-quality performance. However, damage to company property is not necessarily indicative of a service-quality problem, nor is damage to company property susceptible to objective year-to-year comparisons in terms of quantifying and determining whether there has been a "decline" or "improvement" in terms of the Company's performance. Damages to Company property often result from third-party negligence not under the control of management. Therefore, this data is not of the type that can provide a basis for a monetary penalty.

The Department has stated that service-quality measures first and foremost are "designed to prevent deterioration of the service quality ratepayers are entitled to receive." Interim Order at 43. The Department has also stated that, to the extent that that there is a determination that customers have been denied service that they are due based on an analysis of quantifiable, objective data measuring service quality performance, customers "must then be made whole by a financial exaction from the utility for its delinquency." Id. The Department has further stated that the financial exaction is "conceptually akin to liquidated damages in contract law." Id. at 44. Accordingly, the

Department has recognized that service quality penalties are designed to be to "damages" paid as if the company had breached a contract with its customers.

However, in the case of "damage to company property" it is hard to make the connection between the need to "make customers whole" for the "denial of service." Damage to company property may occur as a result of a number of circumstances both within and outside of the control of the company[11] and, in many circumstances, there is no direct link between the company's service-quality performance and the damage caused to company property. As a result, each individual event would need to be reviewed so that a determination could be made as to the "causes" of the event. This determination would necessarily be subjective in nature, which makes the measure unsuitable for a penalty mechanism.

All other penalty measures established by the Department are objectively quantified metrics where the Department has established rules regarding the collection of data statistics and no subjective review of the data is required or allowed. In that regard, the Department has stated that "[w]hen properly collected and interpreted information shows that SQ has not achieved, or has fallen below, the benchmark for the measured activity, then ratepayers are conclusively presumed to have been denied the service they are due." Interim Order at 43. A conclusive presumption that customers have been denied service cannot be made based on either the number or dollar amount of damage to company property incidents.

Specifically, it is difficult to see how "performance" would be quantified to enable a year-to-year comparison and determination that "service" is, in fact, declining,

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11 The vast majority of damage to company property is caused by third-party contractors, not the company itself.

therefore justifying the imposition of a penalty. For example, year-to-year changes in the dollar amount of damage to company property in a year would not necessarily indicate a change in service since some pieces of equipment are far more costly than other pieces. The company could experience just one event of damage to an expensive piece of equipment and in another year have several events adding up to less money. The company could actually have experienced an improvement in service-quality "performance" with just one event, despite the fact that the dollar amount in that year was greater than the year before because the number of incidents would have declined (assuming the "causes" of the incidents were related to the company's service-quality performance). Conversely, a change in the number of events may not necessarily indicate a change in service-quality performance, since each event may be "superficial" or relatively minor incidents. The fact that events are held to only "minor" incidents in a given year may actually indicate an improvement in service quality (to the extent that the "causes" of the incident are determined to relate to the company's service-quality performance.

Moreover, gas companies in particular are subject to stringent federal (United States Department of Transportation) and state safety policies that require the companies to report damage to their property. These federal and state authorities may fine gas companies for failure to maintain company property in proper condition. Accordingly, the Department need not subject companies to further penalties in an area of company operations that is already subject to rigorous oversight.

In the end, there are just too many subjective components of the damage to company property statistic to make this measure an appropriate candidate for a service

quality penalty. Damage to company property is neither sufficiently objective nor quantifiable for purposes of determining a penalty. The Department would have to investigate every instance of "damage" to Company property in order to properly determine whether the dollar impact of the damage, the quantity of incidents, or the nature of the damage has a proper nexus between the Company's operational performance and its customers to warrant a penalty. The lack of a nexus between an incident that caused damage to company property and the company's customers should, in and of itself, disqualify this measurement category from consideration as a penalty measure.

The Department has also recognized that this measure, while potentially indicative of a company's safety performance, was not accepted by any jurisdiction that regulated utility service quality as a measure for which a penalty should be potentially imposed.[12] Accordingly, the Department should not include damage to company property as a penalty measure in future Guidelines.

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12 Specifically, the Department has acknowledged previously that this type of data has not been required by other state public utility commissions to be reported as a service quality measure. D.T.E. 99-84, at 17, n.14 (citing 14 states other than Massachusetts that had adopted or pending service quality plans).

8. Line Loss: *In D.T.E. 99-84, at 18, the Department acknowledged that an electric distribution company may experience percentage variations in line losses from year to year unrelated to SQ degradation. Please discuss whether line losses should be made a reporting requirement in the future Guidelines.*

As a practical matter, NSTAR does not object to the Department's existing requirement that line losses (or unaccounted for gas) be reported as part of the annual service-quality reports. NSTAR has been providing this information to the Department under the current guidelines, as well as to other regulatory authorities in FERC Form 1 and Department of Transportation reports, and the tracking and reporting of this information places no significant administrative burden on the companies.

However, the question correctly recognizes that line losses (and unaccounted for gas) are generally unrelated to the utility's service-quality performance. The Department acknowledged this in D.T.E. 99-84, noting that: (1) much of the annual variation in line losses from year to year stems from the effects of electrical load on a system; and (2) that the amount of load on a system is not entirely within the control of electric companies. Id. Accordingly, eliminating this reporting requirement from future SQ guidelines would be consistent with maintaining the integrity of the Department's service quality policy as one which holds electric and gas companies accountable only for service quality in those operational areas that are within their control.

9. Double Poles: *G.L. c. 164, § 34B requires electric distribution companies and telephone companies engaged in the replacement of an existing pole to remove the existing pole from the site within 90 days after the date of installation of the new pole. Please discuss whether it would be appropriate to include timely removal of double poles as an SQ measure.*

The removal of double poles should not be included as an SQ measure because, similar to "damage to company property" and "line losses" discussed previously, the removal of double poles is neither wholly within the control of the company to

accomplish, nor necessarily related to the level of service provided by the Company to its customers. With regard to the first point, the Department has acknowledged in a separate docket that the removal of double poles requires "the coordinated actions of pole owners and attachees, including municipalities." Report of the Department of Telecommunications and Energy Relative to Reducing the Number of Double Utility Poles Within the Commonwealth, D.T.E. 03-87, at 16.[13] Although the Department also correctly noted that pole owners have some remedies to influence attachees to move their attachments in an effort to facilitate the removal of a double pole set, these remedies are contractual in nature, the enforcement of which may not, in each instance, result in the movement of an attachment.[14] Accordingly, the Department should not equate the removal of double pole sets with other operational performance measures that are more directly within the control of the company.

Moreover, unlike the service quality categories directed by the Department to be tracked that are subject to penalty, the removal of double poles may not have a correlation with the provision of quality service to customers. Indeed, while the *placement* of a new pole creating a double pole set may have a bearing on the provision of safe and reliable service to customers, if, for example, the installation of a new pole is related to the need to install a pole of sufficient size or type to accommodate upgraded distribution system facilities, the *removal* of the older pole does not necessarily serve to maintain service quality. Rather, the removal of the older pole serves primarily to improve aesthetics and to eliminate an unnecessary structure.

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13 This separate docket has allowed the Department to properly assert full jurisdiction over the removal of double pole sets pursuant to its broad authority to regulate and supervise the activities of telephone and distribution companies. G.L. c. 164, § 76; G.L. c. 159; § 16.

14 Ultimately, the remedy may be monetary in nature.

At the same time, NSTAR Electric recognizes (and supports) the need to move forward on the development of a workable system to ensure the timely removal of double poles. NSTAR Electric suggests, therefore, that the Department continue its investigation of the "root cause" of double poles in D.T.E. 03-87 and consider incorporation of the double-poles into the SQ program only upon a determination by the Department that the appropriate apportionment of responsibility to utilities under its jurisdiction is achievable.[15] D.T.E. 03-87, at 15.

10. SAIDI/SAIFI: *In D.T.E. 99-84, at 13, the Department accepted as penalty provisions SAIDI and SAIFI. The Department allowed electric LDCs to use their own company-specific definitions for "sustained outages or interruptions," "momentary outages," and "excludable major events," to establish benchmarks for SAIDI and SAIFI performance standards. Id. Please discuss whether it is appropriate to develop new definitions of these subjects.*

The Company supports the development of new definitions of "sustained outages/interruptions" and "momentary outages." Currently, the D.T.E. 99-84 Guidelines define a "sustained outage" or a "sustained interruption" as an outage or interruption of electric service that lasts at least 1 minute and is not classified as a momentary outage. D.T.E. 99-84 (Guidelines at I.B.) A "momentary outage" or "momentary interruption" is defined by the Guidelines as an outage or interruption of electric service of less than 1 minute. Id.

NSTAR Electric supports changing the definition of "sustained outages/interruptions" from an outage of 1 minute or more to an outage of 5 minutes or more in length. Correspondingly, the term "momentary outage" should be defined as an

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15 The Department has considered whether a penalty mechanism should be implemented relating to the removal of double pole sets and has declined to implement a penalty mechanism, pending the accumulation of sufficient experience with a double pole tracking system to determine whether progress is being made to remove double pole sets within 90 days of their placement. D.T.E. 03-87, at 15.

outage of less than 5 minutes in length (as compared to less than 1 minute in length). Sustained outages defined as 5 minutes or more in length correspond to the timing needed for the operation of state of the art automated sensing and switching devices currently installed within the NSTAR territory, and territories of other utilities, designed to identify the sources of fault current and quickly restore power to as many customers as possible. The devices run through multiple operational steps that require several minutes to complete; even utilizing automated devices that do not require dispatcher intervention requires more than 1 minute in time. The change to a 5 minute sustained outage definition would be in line with industry-wide definitions, and would encourage further distribution automation investments to restore customers' power as quickly as possible, in many cases in under 5 minutes.